

AMENDED IN ASSEMBLY APRIL 30, 2012

AMENDED IN ASSEMBLY APRIL 11, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1944

Introduced by Assembly Member Gatto

February 23, 2012

An act to amend Sections 1798.200, 1798.201, 1798.202, ~~and 1798.211~~, *and 1799.112* of the Health and Safety Code, relating to emergency medical services.

LEGISLATIVE COUNSEL'S DIGEST

AB 1944, as amended, Gatto. Emergency medical services: EMT-P discipline.

Under existing law, the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act, the Emergency Medical Services Authority is responsible for establishing minimum standards and promulgating regulations for the training and scope of practice for an emergency medical technicians-paramedic (EMT-P) who is licensed under the act.

Existing law provides that the Emergency Medical Services Authority may deny, suspend, or revoke licenses issued under these provisions, or may place a licenseholder on probation, upon the occurrence of any of specified events. Existing law also authorizes the director of the authority and the medical director of a local emergency medical service (EMS) agency to temporarily suspend a license upon a determination that specified conditions have been met.

This bill would revise the procedures and requirements for discipline of an EMT-P to, among other things, require *a decision by an employer*

to decline an investigation or an investigation, as specified, and determination of disciplinary cause before the authority may deny, suspend, or revoke a license. The bill would require the medical director of a local EMS agency to refer information regarding conduct that appears to constitute disciplinary cause to the authority or the EMT-P's employer, as specified. The bill would further require, in specified instances, if an EMT-P is unemployed, that the authority conduct an investigation and take disciplinary action, as necessary.

By imposing new duties upon local officials, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The health and safety of Californians often depends on the
- 4 timely response and competent care of emergency medical service
- 5 (EMS) personnel.
- 6 (b) Whether it is an automobile accident, heart attack, near
- 7 drowning, unscheduled childbirth, gunshot wound, or other life
- 8 critical incident, emergency medical technicians (EMTs) provide
- 9 vital, lifesaving, prehospital attention to the public and assist in
- 10 transporting the sick or injured to an appropriate medical facility.
- 11 (c) Effective monitoring and supervision of an EMT's activity
- 12 performed under the authority of the certificate or license is an
- 13 integral component of ensuring the safe and efficient delivery of
- 14 lifesaving services to the public.
- 15 (d) While the state issues licenses to EMT-Paramedics
- 16 (EMT-Ps), multiple agencies and levels of government, from the
- 17 employer and the local emergency medical services agency to the
- 18 state's Emergency Medical Services Authority and its EMS

1 Commission, retain authority to impose EMT-P discipline with
2 no required coordination and often without regard for any
3 appropriately administered discipline imposed by those multiple
4 oversight agencies.

5 (e) The public's health and safety is best protected when policies
6 and procedures relative to EMT oversight are enforced in a
7 consistent and equitable manner and the public's interest is best
8 served when government works closest to the people.

9 (f) Recognizing this, in 2007, California adopted a system for
10 coordinated oversight of EMT-Is and EMT-IIs when the Legislature
11 enacted and the Governor signed Assembly Bill 2917 into law.
12 Consistent with that policy, California's EMS community and the
13 public they protect would be further served by adopting that same
14 system of coordinated oversight for EMT-Ps.

15 SEC. 2. Section 1798.200 of the Health and Safety Code is
16 amended to read:

17 1798.200. (a) (1) (A) Except as provided in paragraph (2),
18 an employer of an EMT-I or EMT-II may conduct investigations,
19 as necessary, and take disciplinary action against an EMT-I or
20 EMT-II who is employed by that employer for conduct in violation
21 of subdivision (c). The employer shall notify the medical director
22 of the local EMS agency that has jurisdiction in the county in which
23 the alleged violation occurred within three days when an allegation
24 has been validated as a potential violation of subdivision (c).

25 (B) Each employer of an EMT-I or EMT-II employee shall
26 notify the medical director of the local EMS agency that has
27 jurisdiction in the county in which a violation related to subdivision
28 (c) occurred within three days after the EMT-I or EMT-II is
29 terminated or suspended for a disciplinary cause, the EMT-I or
30 EMT-II resigns following notification of an impending
31 investigation based upon evidence that would indicate the existence
32 of a disciplinary cause, or the EMT-I or EMT-II is removed from
33 EMT-related duties for a disciplinary cause after the completion
34 of the employer's investigation.

35 (C) At the conclusion of an investigation, the employer of an
36 EMT-I or EMT-II may develop and implement, in accordance with
37 the guidelines for disciplinary orders, temporary suspensions, and
38 conditions of probation adopted pursuant to Section 1797.184, a
39 disciplinary plan for the EMT-I or EMT-II. Upon adoption of the
40 disciplinary plan, the employer shall submit that plan to the local

1 EMS agency within three working days. The employer's
2 disciplinary plan may include a recommendation that the medical
3 director of the local EMS agency consider taking action against
4 the holder's certificate pursuant to paragraph (3).

5 (2) If an EMT-I or EMT-II is not employed by an ambulance
6 service licensed by the Department of the California Highway
7 Patrol or a public safety agency or if that ambulance service or
8 public safety agency chooses not to conduct an investigation
9 pursuant to paragraph (1) for conduct in violation of subdivision
10 (c), the medical director of a local EMS agency shall conduct the
11 investigations, and, upon a determination of disciplinary cause,
12 take disciplinary action as necessary against the EMT-I or EMT-II.
13 At the conclusion of these investigations, the medical director shall
14 develop and implement, in accordance with the recommended
15 guidelines for disciplinary orders, temporary orders, and conditions
16 of probation adopted pursuant to Section 1797.184, a disciplinary
17 plan for the EMT-I or EMT-II. The medical director's disciplinary
18 plan may include action against the holder's certificate pursuant
19 to paragraph (3).

20 (3) The medical director of the local EMS agency may, upon a
21 determination of disciplinary cause and in accordance with
22 regulations for disciplinary processes adopted pursuant to Section
23 1797.184, deny, suspend, or revoke any EMT-I or EMT-II
24 certificate issued under this division, or may place any EMT-I or
25 EMT-II certificate holder on probation, upon the finding by that
26 medical director of the occurrence of any of the actions listed in
27 subdivision (c) and the occurrence of one of the following:

28 (A) The EMT-I or EMT-II employer, after conducting an
29 investigation, failed to impose discipline for the conduct under
30 investigation, or the medical director makes a determination that
31 the discipline imposed was not according to the guidelines for
32 disciplinary orders and conditions of probation and the conduct of
33 the EMT-I or EMT-II certificate holder constitutes grounds for
34 disciplinary action against the certificate.

35 (B) Either the employer of an EMT-I or EMT-II further
36 determines, after an investigation conducted under paragraph (1),
37 or the medical director determines after an investigation conducted
38 under paragraph (2), that the conduct requires disciplinary action
39 against the certificate.

1 (4) The medical director of the local EMS agency, after
2 consultation with the employer of an EMT-I or EMT-II, may
3 temporarily suspend, prior to a hearing, any EMT-I or EMT-II
4 certificate or both EMT-I and EMT-II certificates upon a
5 determination that both of the following conditions have been met:

6 (A) The certificate holder has engaged in acts or omissions that
7 constitute grounds for revocation of the EMT-I or EMT-II
8 certificate.

9 (B) Permitting the certificate holder to continue to engage in
10 the certified activity without restriction would pose an imminent
11 threat to the public health or safety.

12 (5) If the medical director of the local EMS agency temporarily
13 suspends a certificate, the local EMS agency shall notify the
14 certificate holder that his or her EMT-I or EMT-II certificate is
15 suspended and shall identify the reasons therefor. Within three
16 working days of the initiation of the suspension by the local EMS
17 agency, the agency and employer shall jointly investigate the
18 allegation in order for the agency to make a determination of the
19 continuation of the temporary suspension. All investigatory
20 information not otherwise protected by law held by the agency
21 and employer shall be shared between the parties via facsimile
22 transmission or overnight mail relative to the decision to
23 temporarily suspend. The local EMS agency shall decide, within
24 15 calendar days, whether to serve the certificate holder with an
25 accusation pursuant to Chapter 5 (commencing with Section 11500)
26 of Part 1 of Division 3 of Title 2 of the Government Code. If the
27 certificate holder files a notice of defense, the hearing shall be held
28 within 30 days of the local EMS agency's receipt of the notice of
29 defense. The temporary suspension order shall be deemed vacated
30 if the local EMS agency fails to make a final determination on the
31 merits within 15 days after the administrative law judge renders
32 the proposed decision.

33 (6) The medical director of the local EMS agency shall refer,
34 for investigation and discipline, any complaint received on an
35 EMT-I or EMT-II to the relevant employer within three days of
36 receipt of the complaint, pursuant to subparagraph (A) of paragraph
37 (1) of subdivision (a).

38 (b) (1) The authority may, upon determination of disciplinary
39 cause, deny, suspend, or revoke any EMT-P license issued under
40 this division, or may place any EMT-P license issued under this

1 division, or may place any EMT-P licenseholder on probation upon
2 the finding by the director of the occurrence of any of the actions
3 listed in subdivision (c) subsequent to either one of the following:

4 (A) An employer of an EMT-P *declines to conduct an*
5 *investigation or*, after conducting an investigation pursuant to
6 subdivision (b) of Section 1798.201, fails to impose discipline for
7 the conduct under investigation, or the authority makes a
8 determination that the discipline imposed was not according to the
9 guidelines for disciplinary orders, temporary suspensions, and
10 conditions of probation and the conduct of the EMT-P constitutes
11 grounds for disciplinary action against the license.

12 (B) Either the employer of an EMT-P determines, after an
13 investigation conducted pursuant to subdivision (b) of Section
14 1798.201, or the authority determines after an investigation
15 conducted pursuant to subdivision (c) of Section 1798.201, that
16 the conduct requires disciplinary action against the license.

17 (2) Proceedings against any EMT-P license or licenseholder
18 shall be held in accordance with Chapter 5 (commencing with
19 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
20 Code.

21 (c) Any of the following actions shall be considered evidence
22 of a threat to the public health and safety and may result in the
23 denial, suspension, or revocation of a certificate or license issued
24 under this division, or in the placement on probation of a certificate
25 holder or licenseholder under this division:

26 (1) Fraud in the procurement of any certificate or license under
27 this division.

28 (2) Gross negligence.

29 (3) Repeated negligent acts.

30 (4) Incompetence.

31 (5) The commission of any fraudulent, dishonest, or corrupt act
32 that is substantially related to the qualifications, functions, and
33 duties of prehospital personnel.

34 (6) Conviction of any crime which is substantially related to
35 the qualifications, functions, and duties of prehospital personnel.
36 The record of conviction or a certified copy of the record shall be
37 conclusive evidence of the conviction.

38 (7) Violating or attempting to violate directly or indirectly, or
39 assisting in or abetting the violation of, or conspiring to violate,

1 any provision of this division or the regulations adopted by the
2 authority pertaining to prehospital personnel.

3 (8) Violating or attempting to violate any federal or state statute
4 or regulation that regulates narcotics, dangerous drugs, or
5 controlled substances.

6 (9) Addiction to, the excessive use of, or the misuse of, alcoholic
7 beverages, narcotics, dangerous drugs, or controlled substances.

8 (10) Functioning outside the supervision of medical control in
9 the field care system operating at the local level, except as
10 authorized by any other license or certification.

11 (11) Demonstration of irrational behavior or occurrence of a
12 physical disability to the extent that a reasonable and prudent
13 person would have reasonable cause to believe that the ability to
14 perform the duties normally expected may be impaired.

15 (12) Unprofessional conduct exhibited by any of the following:

16 (A) The mistreatment or physical abuse of any patient resulting
17 from force in excess of what a reasonable and prudent person
18 trained and acting in a similar capacity while engaged in the
19 performance of his or her duties would use if confronted with a
20 similar circumstance. Nothing in this section shall be deemed to
21 prohibit an EMT-I, EMT-II, or EMT-P from assisting a peace
22 officer, or a peace officer who is acting in the dual capacity of
23 peace officer and EMT-I, EMT-II, or EMT-P, from using that force
24 that is reasonably necessary to effect a lawful arrest or detention.

25 (B) The failure to maintain confidentiality of patient medical
26 information, except as disclosure is otherwise permitted or required
27 by law in Part 2.6 (commencing with Section 56) of Division 1 of
28 the Civil Code.

29 (C) The commission of any sexually related offense specified
30 under Section 290 of the Penal Code.

31 (d) The information shared among EMT-I, EMT-II, and EMT-P
32 employers, medical directors of local EMS agencies, the authority,
33 and EMT-I and EMT-II certifying entities shall be deemed to be
34 an investigative communication that is exempt from public
35 disclosure as a public record pursuant to subdivision (f) of Section
36 6254 of the Government Code. A formal disciplinary action against
37 an EMT-I, EMT-II, or EMT-P shall be considered a public record
38 available to the public, unless otherwise protected from disclosure
39 pursuant to state or federal law.

1 (e) For purposes of this section, “disciplinary cause” means an
2 act that is substantially related to the qualifications, functions, and
3 duties of an EMT-I, EMT-II, or EMT-P and is evidence of a threat
4 to the public health and safety described in subdivision (c).

5 SEC. 3. Section 1798.201 of the Health and Safety Code is
6 amended to read:

7 1798.201. (a) When information comes to the attention of the
8 medical director of the local EMS agency that an EMT-P
9 licenseholder has committed any act or omission that appears to
10 constitute disciplinary cause as defined in subdivision (e) of Section
11 1798.200, the medical director of the local EMS agency shall refer
12 any information received regarding the conduct of the EMT-P
13 licenseholder to the relevant employer or, if the licenseholder is
14 unemployed, to the authority within three days of receipt of the
15 information so the employer or the authority may conduct an
16 investigation pursuant to this section.

17 (b) An employer of an EMT-P may conduct an investigation,
18 as necessary, and take disciplinary action against an EMT-P who
19 is employed by that employer for conduct in violation of
20 subdivision ~~(e)~~ (e) of Section 1798.200. The employer shall notify
21 the authority within three days of either the date of a decision not
22 to conduct an investigation or the date an allegation has been
23 validated as a potential violation of subdivision (c) of Section
24 1798.200 and the employer has made a determination of
25 disciplinary cause. At the conclusion of an investigation, the
26 employer of an EMT-P may develop and implement, in accordance
27 with the guidelines for disciplinary orders, temporary suspensions,
28 and conditions of probation adopted by the authority, a disciplinary
29 plan for the EMT-P. Upon adoption of the disciplinary plan, the
30 employer shall submit that plan to the authority and to the local
31 EMS agency medical director within three working days. The
32 employer’s disciplinary plan may include a recommendation that
33 the authority consider taking licensure action pursuant to
34 subdivision (b) of Section 1798.200. The employer shall notify
35 the authority and the medical director of the local EMS agency
36 that has jurisdiction in the county within three days of any action
37 taken by the employer pursuant to subdivision (a) of Section
38 1799.112 or within three days of the conclusion of an investigation
39 that results in a determination by the employer to not impose
40 discipline.

1 (c) If an EMT-P is not employed, the authority shall conduct
2 the investigation, and, upon a determination of disciplinary cause,
3 take disciplinary action as necessary against the EMT-P pursuant
4 to subdivision (b) of Section 1798.200.

5 (d) If the employer of the EMT-P, pursuant to subdivision (b)
6 sends a recommendation to the authority for further investigation
7 or discipline of the licenseholder, the recommendation shall include
8 all documentary evidence collected by the employer in evaluating
9 whether or not to make that recommendation. This recommendation
10 and accompanying evidence sent to the authority shall be deemed
11 in the nature of an investigative communication and be protected
12 by Section 6254 of the Government Code. In deciding what level
13 of disciplinary action is appropriate in the case and is consistent
14 with subdivision (b) of Section 1798.200, the authority shall consult
15 with the employer and medical director of the local EMS agency.

16 SEC. 4. Section 1798.202 of the Health and Safety Code is
17 amended to read:

18 1798.202. (a) The director of the authority or the medical
19 director of the local EMS agency, after consultation with the
20 relevant employer, may temporarily suspend, prior to hearing, any
21 EMT-P license upon a determination that: (1) the licensee has
22 engaged in acts or omissions that constitute grounds for revocation
23 of the EMT-P license; and (2) permitting the licensee to continue
24 to engage in the licensed activity, or permitting the licensee to
25 continue in the licensed activity without restriction, would present
26 an imminent threat to the public health or safety. When the
27 suspension is initiated by the local EMS agency, subdivision (b)
28 shall apply. When the suspension is initiated by the director of the
29 authority, subdivision (c) shall apply.

30 (b) The local EMS agency shall notify the licensee that his or
31 her EMT-P license is suspended and shall identify the reasons
32 therefor. Within three working days of the initiation of the
33 suspension by the local EMS agency, the agency shall transmit to
34 the authority, via facsimile transmission or overnight mail, all
35 documentary evidence collected by the local EMS agency relative
36 to the decision to temporarily suspend. The authority and the
37 relevant employer shall jointly investigate the allegation to
38 determine disciplinary cause as defined in subdivision (e) of
39 Section 1798.200. Within two working days of receipt of the local
40 EMS agency's documentary evidence, the director of the authority,

1 in consultation with the employer and consistent with Sections
2 1798.200 and 1798.201, shall determine the need for the licensure
3 action. Part of that determination shall include an evaluation of
4 the need for continuance of the suspension during the licensure
5 action review process. If the director of the authority determines
6 that the temporary suspension order should not continue, the
7 authority shall immediately notify the licensee that the temporary
8 suspension is lifted. If the director of the authority determines that
9 the temporary suspension order should continue, the authority shall
10 immediately notify the licensee of the decision to continue the
11 temporary suspension and shall, within 15 calendar days of receipt
12 of the EMS agency's documentary evidence, serve the licensee
13 with a temporary suspension order and accusation pursuant to
14 Chapter 5 (commencing with Section 11500) of Part 1 of Division
15 3 of Title 2 of the Government Code.

16 (c) The director of the authority shall initiate a temporary
17 suspension with the filing of a temporary suspension order and
18 accusation pursuant to Chapter 5 (commencing with Section 11500)
19 of Part 1 of Division 3 of Title 2 of the Government Code and shall
20 notify the director of the local EMS agency, and the relevant
21 employer.

22 (d) If the licensee files a notice of defense, the hearing shall be
23 held within 30 days of the authority's receipt of the notice of
24 defense. The temporary suspension order shall be deemed vacated
25 if the authority fails to make a final determination on the merits
26 within 15 days after the administrative law judge renders the
27 proposed decision.

28 SEC. 5. Section 1798.211 of the Health and Safety Code is
29 amended to read:

30 1798.211. When making a decision regarding a disciplinary
31 action pursuant to Section 1798.200, ~~Section 1798.201, or Section~~
32 1798.210, the authority, and when applicable the administrative
33 law judge, shall give credit for discipline imposed by the employer
34 and for any immediate suspension imposed by the local EMS
35 agency for the same conduct.

36 SEC. 6. *Section 1799.112 of the Health and Safety Code is*
37 *amended to read:*

38 1799.112. (a) EMT-P employers shall report in writing to the
39 local EMS agency medical director and the authority *within three*

1 *days*, and provide all supporting documentation within 30 days,
2 of whenever any of the following actions are taken:

3 (1) An EMT-P is terminated or suspended for disciplinary cause
4 or reason.

5 (2) An EMT-P resigns following notice of an impending
6 investigation based upon evidence indicating disciplinary cause
7 or reason.

8 (3) An EMT-P is removed from paramedic duties for
9 disciplinary cause or reason following the completion of an internal
10 investigation.

11 (b) The reporting requirements of subdivision (a) do not require
12 or authorize the release of information or records of an EMT-P
13 who is also a peace officer protected by Section 832.7 of the Penal
14 Code.

15 (c) For purposes of this section, “disciplinary cause or reason”
16 means only an action that is substantially related to the
17 qualifications, functions, and duties of a paramedic and is
18 considered evidence of a threat to the public health and safety as
19 identified in subdivision (c) of Section 1798.200.

20 (d) Pursuant to subdivision (i) of Section 1798.24 of the Civil
21 Code, upon notification to the paramedic, the authority may share
22 the results of its investigation into a paramedic’s misconduct with
23 the paramedic’s employer, prospective employer when requested
24 in writing as part of a preemployment background check, and the
25 local EMS agency.

26 (e) The information reported or disclosed in this section shall
27 be deemed in the nature of an investigative communication and is
28 exempt from disclosure as a public record by subdivision (f) of
29 Section 6254 of the Government Code.

30 (f) A paramedic applicant or licensee to whom the information
31 pertains may view the contents, as set forth in subdivision (a) of
32 Section 1798.24 of the Civil Code, of a closed investigation file
33 upon request during the regular business hours of the authority.

34 ~~SEC. 6.~~

35 *SEC. 7.* If the Commission on State Mandates determines that
36 this act contains costs mandated by the state, reimbursement to
37 local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

O